

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**EDDIE CLUCK,**

**Appellant,**

**v.**

**UNION PACIFIC RAILROAD COMPANY,**

**Respondent.**

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**DOCKET NUMBER WD70792**

**Date: January 11, 2011**

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Appeal from:  
Jackson County Circuit Court  
The Honorable Ann Mesle, Judge

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Appellate Judges:  
Division Four: Lisa White Hardwick, Chief Judge, Presiding, Gary D. Witt, Judge,  
and James Van Amburg, Special Judge

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Attorneys:  
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Sullivan, Esq., and Jose M. Bautista, Esq., Kansas City, MO, for appellant.  
James M. Yeretsky, Esq. and Craig M. Leff, Esq., Kansas City, MO, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

EDDIE CLUCK

Appellant,

v.

UNION PACIFIC RAILROAD COMPANY,

Respondent.

WD70792

Jackson County

Before Division Four Judges: Lisa White Hardwick, Chief Judge, Presiding,  
Gary D. Witt, Judge, and James Van Amburg, Special Judge

Eddie Cluck appeals the judgment, following a jury verdict, denying a Federal Employers' Liability Act (FELA) claim against his employer, Union Pacific Railroad, for injuries he suffered when a co-worker's gun discharged. Cluck contends the circuit court erred in failing to instruct the jury on his theory of imputed liability under MAI 24.01(A).

### **REVERSED AND REMANDED.**

**Division Four holds:** Cluck presented substantial evidence to support his FELA claim based on imputed liability. The circuit court prejudicially erred in failing to submit a verdict director on that claim because Cluck was entitled to have the jury consider his chosen theory of liability. The judgment is reversed, and the cause is remanded for a new trial on the claim of imputed liability.

Opinion by: Lisa White Hardwick, Judge

January 11, 2011

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